

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE ex rel. AG PROCESSING, et al.,

Appellant,

v.

PUBLIC SERVICE COMMISSION, et al.,

Respondent.

DOCKET NUMBER WD71986 Consolidated with WD71987

Date: March 1, 2011

Appeal from:
Cole County Circuit Court
The Honorable Richard G. Callahan, Judge

Appellate Judges:
Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:
David L. Woodsmall, Esq., Lewis R. Mills, JR., Esq., Jefferson City, MO, for appellant.
Steven C. Reed, Esq., Samuel Ritchie, Esq., Jefferson City, MO; Karl Zobrist, Esq., Roger W. Steiner, Esq., Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

KCP&L Greater Missouri Operations Co. filed a tariff on December 30, 2008, which sought to adjust its electricity rates pursuant to a Fuel Adjustment Clause which had previously been approved by the Public Service Commission (the "PSC" or "Commission"). KCP&L sought a forward-looking rate adjustment which would become effective March 1, 2009, to reflect fuel and purchased power costs it incurred between June 1 and November 30, 2008, which costs were higher than the energy costs included in KCP&L's existing base rates. The PSC approved KCP&L's rate-adjustment tariff. Appellants AG Processing, Inc. and Sedalia Industrial Energy Users' Association petitioned the circuit court for review of the Commission order; Appellant Office of Public Counsel intervened. The circuit court rejected the Appellants' challenges to the Commission's order. Appellants now appeal to this Court.

AFFIRMED.

Division Two holds:

The Appellants argue that the rate adjustment which the PSC approved violates the "retroactive ratemaking doctrine," because the adjustment allows KCP&L to recover from its customers costs which KCP&L incurred in a prior period, based on KCP&L's claim that the rates in effect during that prior period were inadequate to cover KCP&L's actual energy costs.

The Fuel Adjustment Clause contained in KCP&L's tariffs permits KCP&L to pass through to customers 95% of the amount by which its fuel and purchased power costs exceed (or fall below) the amount reflected in KCP&L's base rates. Under the Fuel Adjustment Clause, KCP&L calculates its actual energy costs during two six-month "Accumulation Periods." After each Accumulation Period ends, KCP&L may file tariff sheets adjusting its rates to reflect any difference between the energy costs it actually incurred during the Accumulation Period, and the energy costs included in its base rates. Upon Commission approval, KCP&L can implement the

revised rates, which allow it to collect (or refund) over a twelve-month period the difference between its actual energy costs and the costs forecast at the time of its rate case.

In *State ex rel. Util. Consumers' Council of Mo., Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979) ("UCCM"), the Missouri Supreme Court specifically held that the legislature could authorize adjustment clauses which would permit a utility to "fully and automatically pass on" to consumers, in future rates, the excess energy costs the utility incurred in a prior period. Section 386.266.1, RSMo, adopted in 2005, accepts the Supreme Court's invitation in *UCCM*, and specifically authorizes fuel adjustment clauses like KCP&L's.

UCCM holds that, under the retroactive ratemaking doctrine, a utility cannot recover amounts in excess of its "established rates" at the time utility service is provided, and that a utility cannot recover excess costs it incurs in a particular period through a surcharge adopted after-the-fact. However, *UCCM* plainly contemplates that an approved fuel adjustment clause becomes part of the utility's "established rate," and that the clause may lawfully permit a utility to recover previously incurred excess energy costs in future rates, where the adjustment clause was in effect at the time the excess costs were actually incurred. Applying this principle, we held in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo. App. W.D. 2010), that KCP&L could not employ its Fuel Adjustment Clause to recover excess energy costs incurred before the Fuel Adjustment Clause itself became effective; instead, "[o]nly costs incurred after the effective date of an appropriate tariff may be recovered under a fuel adjustment clause."

Here, all of the excess energy costs KCP&L sought to recover through the December 30 2008 rate adjustment tariff were incurred during a period when KCP&L's Fuel Adjustment Clause was in effect, and the rate adjustment applies only to electricity KCP&L supplies to customers in the future. Under *UCCM*, the rate adjustment does not violate the retroactive ratemaking doctrine.

Opinion by: Alok Ahuja, Judge

March 1, 2011

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